

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-131015-07

Date:
December 11, 2007

Employer =

Date 1 =

Date 2 =

Date 3 =

X =

Dear :

This is in response to a letter dated July 3, 2007 submitted by your authorized representative, requesting consent to revoke an election you made under § 83(b) of the Internal Revenue Code (IRC § 83).

You represent that you entered into a Restricted Stock Agreement (RSA) with Employer on Date 1. Under the RSA, Employer granted X shares of Employer stock to you. The RSA provides that the shares were substantially nonvested on the date of grant.

On Date 2, you filed an election under IRC § 83(b) with respect to the restricted stock. On Date 3, Employer informed you that, as of Date 1, all of Employer's authorized stock was issued and outstanding, and that no Employer stock was available for issuance to you as contemplated by the RSA. On July 3, 2007, you sent the above-referenced letter requesting consent to revoke the IRC § 83(b) election.

Under IRC § 83(a), if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, then the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first

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day that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for the property, is included in the service provider's gross income for the taxable year which includes that day.

IRC § 83(b) and §1.83-2(a) of the Income Tax Regulations permit the service provider to elect to include in gross income the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) over the amount (if any) paid for the property, as compensation for services. If this election is made, the substantial vesting rules of IRC § 83(a) and the regulations thereunder do not apply to the property, and, assuming there is no compensatory cancellation of a nonlapse restriction, any subsequent appreciation in the value of the property is not taxable as compensation to the service provider.

Under IRC § 83(b)(2), an election made under IRC § 83(b) must be made in accordance with the regulations thereunder and must be filed with the Internal Revenue Service no later than 30 days after the date that the property is transferred to the service provider.

IRC § 83(b)(2) and §1.83-2(f) of the Income Tax Regulations provide that an election under IRC § 83(b) may not be revoked without the consent of the Commissioner of Internal Revenue. The regulations also provide that such consent will only be granted where the person filing the election is under a "mistake of fact" as to the underlying transaction and must be requested within 60 days of the date on which the mistake of fact first became known to the person who made the election. In any event, neither a mistake as to the value (or decline in the value) of the property for which an election was made, nor the failure of anyone to perform an act that was contemplated at the time of "transfer" of the property constitute a "mistake of fact" for this purpose.

Rev. Proc. 2006-31, 2006-27 I.R.B. 32, provides guidance on revoking an election under IRC § 83(b). Section 5, Example 3 describes a situation involving a mistake of fact as to the underlying transaction. In Example 3, B begins employment with Company O under an employment contract that provides B will receive substantially nonvested Company O Class A common stock. Instead, substantially nonvested Company O Class B common stock is transferred to B. B made a valid IRC § 83(b) election with respect to the transferred stock. B subsequently discovers that Company O has 2 classes of common stock and that Company O transferred Class B common stock instead of Class A common stock. B timely requests consent to revoke the IRC § 83(b) election. Consent to revoke B's IRC § 83(b) election is granted because the stock B received was transferred under a mistake of fact as to the underlying transaction.

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Based solely on the facts in your submission, we rule that, because property was not transferred in connection with the performance of services, as contemplated by the RSA, IRC § 83 was not implicated and that your IRC § 83(b) election was, therefore, void ab initio.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other IRC provision. The ruling is directed only to the taxpayer requesting it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be attached to your income tax return for .

Sincerely yours,

KENNETH M. GRIFFIN
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)